

REMARKS

Substance of Interview May 3, 2007

Applicant's representative Elliott Mason (Reg. No. 56,569) thanks the Examiner for the telephone interview on May 3, 2007. In accordance with MPEP Section 713.04, the substance of the interview is included herein. No exhibits were shown. Claim 1 was discussed with respect to the cited reference Kern. The basis for the rejection was discussed, however, no agreement was reached.

Applicant also inquired about the finality of the Office Action. Applicant's representative asked whether the finality of the Office Action was premature according to the MPEP section 706.07(a), which states "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement ..." New grounds of rejection for claims 8, and 13-17 were given which were not based on information submitted in an information disclosure statement, nor necessitated by Applicant's amendment of the claim 1 (which did not necessitate a new ground of rejection for claim 1). Accordingly, Applicant's representative requested withdrawal of the finality of the present Office Action.

Substance of Interview May 15, 2007

Applicant's representative Elliott Mason (Reg. No. 56,569) thanks the Examiner for the telephone interview on May 15, 2007. In accordance with MPEP Section 713.04, the substance of the interview is included herein. No exhibits were shown. The Examiner indicated that the finality of the Office Action was being withdrawn.

Prior Art Rejections

Claims 1, 9-11, 15-17, 21, and 22 stand rejected under 35 U.S.C. 102(b) as anticipated by Kern (U.S. 4,601,545). Claims 8, 13, and 14 stand rejected under 35 U.S.C. 103(a) as unpatentable over Kern in view of Rizzo (U.S. 5,800,530).

Claim 1

Applicant submits that Kern neither discloses nor suggests at least that "the wavefront data is configured according to a selected a high-order aberration correction to modify the characteristic function of the optical element to reduce high-order aberration in the eye," as recited by amended claim 1.

In the Office Action, it appears that the Examiner is interpreting the RAM or ROM in the CPU 54 as the recited "memory element," and the "instructions regarding distribution of voltage levels" as the recited "wavefront data." The Examiner refers to col. 5, lines 45-47 as disclosing an "aspheric lens effect ... which reduce high order, or spherical, aberration." However, this aspheric lens effect is described in the context of electrode arrangements illustrated in FIGS. 5a-5d. Even if the aspheric lens effect is used to reduce high-order aberration in the eye, there is nothing in Kern to suggest that the instructions stored in the RAM or ROM are "configured according to a selected a high-order aberration correction to modify the characteristic function of the optical element to reduce high-order aberration in the eye." Accordingly, Kern does not anticipate claim 1.

Moreover, upon reading Kern, the person of ordinary skill in the art (POSITA) would not have departed from the teaching of Kern, which describes using various electrode arrangements to achieve effects such as the aspheric lens effect, if motivated to reduce high-order aberration using the variable lens system of Kern. There is no reason that the POSITA would go against these teachings to instead use data stored in the RAM or ROM configured according to a selected a high-order aberration correction to modify the characteristic function of Kern's variable lens system to reduce high-order aberration in the eye.

Dependent claims 8-11, 13-17, 21 and 22

No proper combination of Kern and Rizzo teaches or suggests the subject matter found to be lacking in Kern. The remaining claims are all properly dependent on claim 1, are thus allowable therewith. The dependent claims also add one or more further limitations, which are not presently relied upon to establish patentability. For that reason, and not because Applicant

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agrees with the Examiner, no rebuttal is offered to the Examiner's reasons for rejecting the dependent claims.


New claims 23-26

New dependent claims 23-26 are supported throughout the original specification and drawings including, for example, at: page 8, line 10; and page 9, lines 2-4. Claims 23-26 depend on claim 1 and are allowable therewith.

No fee is believed due. Please apply any other charges or credits to deposit account 06-1050, referencing Attorney Docket No. 00633-041001.

Respectfully submitted,

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